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**FILED**  
DISTRICT COURT OF GUAM

AUG - 1 2006 *mdc*

MARY L.M. MORAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

06-00020

8 NIPPO CORPORATION,

9 Plaintiff,

10 vs.

11 INTERNATIONAL BRIDGE CORPORATION,  
12 INTERNATIONAL BRIDGE AND  
13 CONSTRUCTION/MARIANAS, INC., AND  
14 INTER BAY CIRCLE MARINE,

15 Defendants.

CIVIL CASE NO. CV \_\_\_\_\_

COMPLAINT FOR BREACH OF  
CONTRACT, ALTER EGO LIABILITY,  
CONSTRUCTIVE TRUST, BREACH OF  
FIDUCIARY DUTIES, CONVERSION,  
AND FOR AN ACCOUNTING

16 COMES NOW Plaintiff NIPPO CORPORATION (hereinafter "Nippo")  
17 and for its claims for relief alleges as follows:

18 1. This Court has jurisdiction over this action pursuant  
19 to 28 USC §1332 based on diversity of citizenship. The amount in  
20 controversy exceeds \$75,000. Venue properly lies in this  
21 district inasmuch as most of the parties reside in this district  
22 and the majority of the transactions at issue occurred in this  
23 district.

24 2. Nippo is, and at all times herein relevant was, a  
25 corporation organized and existing under the laws of the Nation  
26 of Japan with its principal place of business in Tokyo, Japan.  
27  
28

**ORIGINAL**

1        3. Defendant **INTERNATIONAL BRIDGE CORPORATION** (hereinafter  
2 "IBC") is, and at all times herein relevant was, a corporation  
3 organized and existing under the laws of the State of Ohio with  
4 its principal place of business in Yigo, Guam.

5        4. Defendant **INTERNATIONAL BRIDGE AND CONSTRUCTION/MARIANAS, INC.**  
6 (hereinafter "IBCM") is a corporation organized and existing  
7 under the laws of the Commonwealth of the Northern Mariana  
8 Islands with its principal place of business in Yigo, Guam.

9        5. Defendant **INTER BAY CIRCLE MARINE** (hereinafter "Inter Bay")  
10 is a corporation organized and existing under the laws of Guam  
11 with its principal place of business in Yigo, Guam.

12        6. Nippo is informed and believes and thereon alleges that  
13 each and every Defendant named herein served as an agent or  
14 employee of each and every other Defendant in performing the acts  
15 alleged herein.

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18                    **FIRST CLAIM FOR RELIEF (BREACH OF CONTRACTS)**

19        7. Nippo realleges and incorporates herein by this  
20 reference paragraphs 1 through 6, inclusive.

21        8. Commencing in or about 2001, Nippo and IBC entered into  
22 a succession of joint venture and related agreements, which were  
23 amended from time to time, in connection with the performance of  
24 various construction projects including the Wake Island Runway,  
25 Koyukuk Airport Alaska, Jaluit School, Asphalt Concrete Paving at  
26 Andersen Air Force Base, Route 4 Reconstruction and Widening in  
27 Yona, Guam, PAIP X, Construction of Permanent Classrooms, Runway  
28

1 6L and Taxiway G for Guam International Airport Authority, PAIP  
2 XI, Asphalt Concrete Paving Navy, PAIP XII, North Runway Repairs  
3 at Andersen Air Force Base, Palmer Southwest Utility System  
4 Extension, and ANVIK Airport Improvements.

5 9. Pursuant to the terms of the agreements, Nippo was  
6 responsible for providing performance guarantees and partial  
7 financing of the projects whereas IBC was responsible for actual  
8 performance of the projects and, in consideration for Nippo's  
9 contributions, Nippo was guaranteed a specific return on each  
10 project with the balance of the project proceeds payable to IBC  
11 and the risk of financial loss on the projects resting with IBC.

12 10. Pursuant to the terms of the joint venture agreements,  
13 payments in connection with the performance of the work were to  
14 have been deposited into a joint venture account at the Bank of  
15 Guam in Guam, subject to the signatory control of Nippo, but, as  
16 alleged hereinafter, such did not always occur.

17 11. Commencing at the latest in or about late 2003, IBC  
18 gave instructions to the owners of joint venture projects to make  
19 payment of project proceeds to an account other than that  
20 designated pursuant to the joint venture agreements. As a  
21 result, an amount of approximately \$14,000,000 in joint venture  
22 project proceeds, which should properly have been deposited into  
23 the joint venture account at the Bank of Guam, was instead  
24 deposited into an IBC account in the KAW Valley Bank in Kansas.

25 //  
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1 The unauthorized diversion of joint venture construction proceeds  
2 into this account constituted a breach of the joint venture  
3 agreements.

4 12. Upon discovery of the diversion of funds, Nippo made  
5 demand upon IBC to return the joint venture funds improperly  
6 deposited into an IBC account but, with the exception of certain  
7 offsets recognized by Nippo, no funds were returned, and  
8 approximately \$6,000,000 of joint venture funds deposited into  
9 the IBC account has never been properly accounted for.

11 13. The cost of performance of the projects exceeded the  
12 amounts payable under the construction contracts and Nippo was  
13 required to advance substantial amounts to IBC to continue and  
14 complete the work, all of which was properly reimbursable by IBC  
15 pursuant to the joint venture agreements.

17 14. Pursuant to the terms of the joint venture agreements,  
18 there is presently past due and payable from IBC to Nippo the sum  
19 of \$20,047,000, with interest thereon according to proof, with  
20 the final amount to be established by proof at trial. Nippo has  
21 made a demand upon IBC for payment of \$20,047,000 as alleged  
22 herein but IBC has failed and refused and continues to fail and  
23 refuse to pay the same.

24  
25 **SECOND CLAIM FOR RELIEF (ALTER EGO)**

26 15. Nippo realleges and incorporates herein by this  
27 reference paragraphs 1 through 14 of this complaint.

28 //

1        16. Nippo is informed and believes and thereon alleges that  
2 Defendants IBCM and Inter Bay are, and at all times herein  
3 relevant were, alter egos of Defendant IBC and that there exists,  
4 and at all times herein mentioned has existed, a unity of  
5 interest and ownership between said Defendants such that any  
6 separateness has ceased to exist. Among other things, funds of  
7 IBC, IBCM, and Inter Bay have been commingled, IBC funds have  
8 been used to pay the operational expenses and debts of IBCM and  
9 Inter Bay, assets have been placed in the name of IBCM which have  
10 been purchased with the funds of IBC, and the corporate  
11 separateness of said entities have been disregarded on a regular  
12 basis.  
13

14        17. Inasmuch as IBCM and Inter Bay are alter egos of IBC,  
15 said Defendants are jointly and severally liable to Nippo for the  
16 \$20,047,000 due and payable as alleged in the First Claim for  
17 Relief.  
18

19                    **THIRD CLAIM FOR RELIEF (CONSTRUCTIVE TRUST)**

20        18. Nippo hereby realleges and incorporates herein by this  
21 reference paragraphs 1 through 17 of this complaint.

22        19. As alleged hereinabove, over \$6,000,000 in funds which  
23 should properly have been deposited into the joint venture  
24 account at the Bank of Guam were improperly and wrongfully  
25 diverted by IBC to the KAW Valley Bank account in Kansas. Nippo  
26 is informed and believes and thereon alleges that a significant  
27 portion of said funds were subsequently utilized by IBC to  
28

1 purchase heavy construction equipment, the ownership of which was  
2 placed in the name of either IBC or IBCM. Inasmuch as the joint  
3 venture projects were, as a whole, operating at a substantial  
4 loss resulting in the \$20,047,000 debt from IBC to Nippo as  
5 alleged hereinabove, essentially all of these funds which were  
6 improperly diverted from the joint venture account, in violation  
7 of IBC's fiduciary duties to its joint venture partner, were the  
8 property of Nippo.  
9

10 20. Attached hereto as Exhibit "A" and incorporated herein  
11 by this reference is a listing of the equipment owned by IBC and  
12 IBCM which Nippo is informed and believes were purchased with  
13 diverted joint venture funds which were the property of Nippo.  
14

15 21. By virtue of the wrongful utilization of joint venture  
16 funds to purchase and pay for said equipment, Defendants IBC and  
17 IBCM obtained legal title to the equipment and, as such, are  
18 involuntary trustees holding the equipment and profits therefrom  
19 in constructive trust for Nippo with a duty to reconvey the same  
20 to Nippo forthwith.  
21

#### 22 **FOURTH CLAIM FOR RELIEF (BREACH OF FIDUCIARY DUTIES)**

23 22. Nippo realleges and incorporates herein by this  
24 reference paragraphs 1 through 21 of this complaint.

25 23. Defendant IBC, as a joint venture partner, and its  
26 management employees were required at all times herein alleged to  
27 act in good faith with a view towards the best interests of the  
28 joint venture and were not permitted to use their position of

1 trust and confidence to further their private interests at the  
2 expense of the joint venture.

3       24. As indicated hereinabove, IBC, in breach of its  
4 fiduciary duties, wrongfully deposited joint venture funds into  
5 an IBC account and failed to properly account for approximately  
6 \$6,000,000 of joint venture funds some or all of which, on  
7 information and belief, were used to purchase construction  
8 equipment which was subsequently leased by IBCM to the joint  
9 venture. Nippo is further informed and believes that IBC further  
10 breached its fiduciary duties owed to Nippo through other acts  
11 and transactions whereby it benefited itself and related persons  
12 and entities at the expense of the joint venture. The dates,  
13 details and records of these other transactions cannot be given  
14 with more particularity at this time because many of the records,  
15 books and papers pertaining to these transactions are not in the  
16 possession of Nippo.  
17  
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19       25. As a result of the breach of the fiduciary duties  
20 alleged herein, Nippo has been damaged in a sum in excess of  
21 \$6,000,000, subject to proof at trial.  
22

23       26. The acts and conduct of IBC as herein alleged were  
24 oppressive, fraudulent, and malicious in that IBC knew the funds  
25 at issue were the property of the joint venture and that actions  
26 intentionally and willfully taken were damaging the joint venture  
27 while benefiting IBC and related entities. Nippo therefore seeks  
28 punitive and exemplary damages of \$10,000,000.



1 **FIFTH CLAIM FOR RELIEF (CONVERSION)**

2 27. Nippo realleges and incorporates herein by this  
3 reference paragraphs 1 through 26 of this complaint.

4 28. The wrongful and intentional diversion of at least  
5 \$6,000,000 in joint venture funds by IBC from the joint venture  
6 account to an IBC account in the State of Kansas constituted a  
7 tortious conversion of said funds proximately resulting in a loss  
8 to Nippo of at least \$6,000,000 with the ultimate loss subject to  
9 proof of at trial.  
10

11 29. The willful and intentional act of IBC in diverting and  
12 converting at least \$6,000,000 in joint venture funds was  
13 willful, fraudulent, and malicious inasmuch as the funds were the  
14 property of the joint venture and the diversion of the funds  
15 directly and proximately damaged Nippo. Nippo therefore seeks  
16 punitive and exemplary damages of \$10,000,000.  
17

18 **SIXTH CLAIM FOR RELIEF (ACCOUNTING)**

19 30. Nippo realleges and incorporates herein by this  
20 reference paragraphs 1 through 29 of its complaint.

21 31. As alleged hereinabove, an amount of approximately  
22 \$6,000,000 in joint venture funds were improperly diverted to an  
23 IBC account and have not yet been properly accounted for.  
24 Moreover, although IBC was required pursuant to the joint venture  
25 agreements to bear the risk of loss in connection with the  
26 construction work, Nippo has been required to advance many  
27 millions of dollars to keep the construction projects going  
28



1 forward inasmuch as many of the projects have suffered large  
2 losses which IBC has been unable to pay. Nippo has never been  
3 reimbursed by IBC for these losses.

4 32. Nippo does not have sufficient information about the  
5 actual costs of the construction and the utilization of the joint  
6 venture funds to compute a precise allocation of the debts and  
7 expenditures incurred, nor does it have adequate information to  
8 determine for what purposes the diverted joint venture funds were  
9 put to use by IBC and whether any of those funds have been  
10 utilized to purchase assets for other entities and individuals so  
11 that a constructive trust has attached to those assets.

13 33. Nippo is entitled to a full and complete accounting of  
14 the joint venture affairs so that its profits, losses and  
15 diverted funds can all be accounted for, properly apportioned,  
16 and pursued through further litigation against other entities and  
17 individuals, if necessary.

19 **WHEREFORE,** Plaintiff **NIPPO CORPORATION** prays judgment as  
20 follows:

21 1. For a joint and several judgment against Defendants  
22 **INTERNATIONAL BRIDGE CORPORATION, INTERNATIONAL BRIDGE AND**  
23 **CONSTRUCTION/MARIANAS, INC.** and **INTER BAY CIRCLE MARINE** in the principal  
24 amount of \$20,047,000;

26 2. For interest thereon in an amount according to proof;

27 3. Declaring that IBC and IBCM hold the construction  
28 equipment listed in Exhibit "A" in trust for Nippo;

1 4. Compelling IBC and IBCM to transfer legal title and  
2 possession of the equipment to Nippo;

3 5. For the value of rents and profits received by IBC and  
4 IBCM for said equipment and compelling Defendants to account  
5 fully therefore;

6 6. For a complete accounting from IBC of all the affairs  
7 and transactions of the joint venture so that its profits,  
8 losses, and diverted funds may all be located and properly  
9 accounted for;

10 7. For punitive and exemplary damages of \$10,000,000 from  
11 all Defendants;

12 8. For costs of suit incurred herein; and

13 9. For such other and further relief as the Court may deem  
14 just and proper.  
15

16 DATED this 1st day of August, 2006.  
17

18  
19 BLAIR STERLING JOHNSON  
20 MOODY MARTINEZ & LEON GUERRERO  
A PROFESSIONAL CORPORATION

21  
22 BY:   
23

THOMAS C. STERLING  
Attorneys for Plaintiff Nippo Corporation

24 ATTACHMENT: EXHIBIT "A"

25 E62:49:62\52765-01  
26 G:\WORDDOC\PLD\TCS\292A-COMPLAINT RE NIPPO V IBC ET AL.DOC  
27  
28

EOPT CATEGORY	MANUFACTURER	SERIAL NUMBER
1 DOZERS	CATERPILLAR, D9L DOZER	14Y02762
2 DOZERS	CATERPILLAR, D-11N	74Z0980
3 BACKHOES	CATERPILLAR, 375L EXCAVATOR	8XG0201
4 BACKHOES	CATERPILLAR, 245B ME EXCAVATOR	6MF0061
5 BACKHOES	KOMATSU EXCAVATOR, PC30-7E	28513
6 LOADERS	CATERPILLAR, 246 SKID STEER	5SZ07875
7 LOADERS	CATERPILLAR, 988B WHEEL LOADER	50W04744
8 LOADERS	CATERPILLAR, 226 SKID STEER	5FZ06927
9 SCRAPERS/TRENCH	CATERPILLAR, 773B ROCK TRUCK	63W01486
10 SCRAPERS/TRENCH	CATERPILLAR, 773B ROCK TRUCK	63W01492
11 GRADERS	140H MOTOR GRADER, 140H	2Z507634
12 GRADERS	CATERPILLAR, 140G MOTOR GRADER	72V15718
13 CRUSHING EQPT	RADIAL STACKING, 30 X 60FT. CONVEYOR	OBL
14 CRUSHING EQPT	SUPERIOR, 36 X 50FT. CONVEYOR	3994
15 CRUSHING EQPT	95 TELSMITH, 48" X 23FT. CONVEYOR	C318686-401M
16 CRUSHING EQPT	MO ROGERS, 36" X 60FT. CONVEYOR	OBL
17 CRUSHING EQPT	PORTABLE FEED, 30" X 32FT. CONVEYOR	RITCH.BROS 6-03
18 CRUSHING EQPT	NC RIBBLE, 36"X60FT. CONVEYOR	47485
19 CRUSHING EQPT	D & M RECIPROCATING, 36"X 5FT. PLATE FEEDER	RITCH.BROS 6-03
20 CRUSHING EQPT	98 REUTER, 30"X60FT. STACKABLE	306067989
21 CRUSHING EQPT	00 EXCEL, 30"X60FT. RADIAL STACK	00158
22 CRUSHING EQPT	99 EXCEL, 30"X60FT. RADIAL STACK	RITCH.BROS 6-03
23 CRUSHING EQPT	00 EXCEL, 30"X60FT. RADIAL STACK	RITCH.BROS 6-03
24 CRUSHING EQPT	RADIAL STACKING, 30"X60FT. CONVEYOR	RITCH.BROS 6-03
25 CRUSHING EQPT	PROTOUGH 400 THOMAS, 6X7 FT. 2 DECK SCREENING	74000838
26 CRUSHING EQPT	EXCEL, 30"X60FT. RADIAL STACK	00149
27 CRUSHING EQPT	13-15 KOBELCO, HORIZONTAL IMPACT	112655
28 ASPHALT	AP4000, PROFILOGRAPH	410104
29 TRUCKS	ISUZU, '98 DUMP TRUCK	FRR12DA36071464
30 PICK-UPS & CARS	MONTERO ES, JA4LS21H51P002191	4X2 WAGON
31 PICK-UPS & CARS	97 FORD VAN, BLUE AEROSTAR	1FMDA31U4VZC14862
32 PICK-UPS & CARS	97 FORD VAN, RED AEROSTAR	1FMDA31V4VZC14828
33 PICK-UPS & CARS	'91 CHEVY, 2500 STAKE TRUCK	1GBGC24JXME152062
34 PICK-UPS & CARS	'91 CHEVY, 2500 STAKE BODY	1GBGC24J6ME181056
35 PICK-UPS & CARS	'91 CHEVY, 2500 STAKE BODY	1GBGC24J3ME181001
36 PICK-UPS & CARS	'91 CHEVY, 2500 STAKE BODY	1GBGC24J2ME180714
37 PICK-UPS & CARS	'91 CHEVY, 2500 STAKE BODY	1GBHC34J6ME189474
38 PICK-UPS & CARS	'93 CHEVY, 2500 STAKE BODY	1GBGC24J0PE181123
39 PICK-UPS & CARS	'88 CHEVY, G30 VAN	2GCGG31J9J4140460
40 PICK-UPS & CARS	'90 CHEVY, G30 VAN	2GBGG31J9L4123035
41 PICK-UPS & CARS	'88 CHEVY, G30 VAN	2GCGG31J3J4144388
42 PICK-UPS & CARS	88 CHEVY, G30 VAN	2GCGG31J7J4140571
43 VANS	DODGE RAM B350, CARGO VAN	2B5WB35Y0SK546943
44 VANS	DODGE RAM, CARGO VAN	2B5WB35Y0TK107873
45 VANS	99 FORD E-250, CARGO VAN	1FTPE2420XHA74151
46 COMPACTORS	IR ROLLER 1999, PT-125R	160230
47 COMPACTORS	CAT ROLLER, CB-434C	15063
48 COMPACTORS	INGERSOLL-RAND, SD115 SOIL COMP.	152379
49 COMPACTORS	INGERSOLL-RAND, SD115 SOIL COMP.	157782
50 GENERATOR	SDG45S, ACE OCEAN	3A10069
51 STORAGE VANS	DUNGAN & CO., 40' INSULATED CONTAINER	
52 STORAGE VANS	DUNGAN & CO., 40' INSULATED CONTAINER	
53 FORKLIFTS	CATERPILLAR, TH83 TELESCOPIC	3RN02721
54 CRANES	P&H 40TON, MODEL 440	
55 MISCELLANEOUS	ROAD LAZER PAINTER	

## EXHIBIT "A"